

Approved as Written: 2/20/02

**CITY OF MORGAN HILL  
SPECIAL AND REGULAR CITY COUNCIL AND  
SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES - FEBRUARY 6, 2002**

**CALL TO ORDER**

Mayor Pro Tempore/Agency Member Carr called the meeting to order at 5:35 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Chang, Sellers, Tate  
Late: Mayor Dennis Kennedy (arrived at 8:15 p.m.)

**DECLARATION OF POSTING OF AGENDA**

Office Assistant II Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

***City Council and Redevelopment Agency Action***

**WORKSHOP:**

**1. LIBRARY PROJECT CONCEPTUAL DESIGN**

Recreation Manager Julie Spier reviewed the process that has taken place in the design of the proposed new library and surrounding grounds. She reported that meetings have been held on a regular basis one or more times a month with members of the Library Building Committee, the Friends of the Library, Morgan Hill Unified School District staff and the design team. The group has made a concerted effort to reach out to the community for input and comments, including making the drawings available on display at the Morgan Hill Library and sending letters out to the neighbors inviting them to the meetings. Also, meetings have been publicized to invite public input. She reported that the process is on schedule for submittal of the grant application for library building funds.

Chris Noll, Noll & Tam Architectural firm, introduced landscape architect Aditya Advani who would review the landscape design plan for Council Members. He reviewed the drawing of the landscape design and explained the motivation for choosing the design elements that have been included.

Mr. Noll reviewed the building design, pointing out the various design features that have been incorporated (i.e., the mechanical equipment on the roof is hidden by the higher outer edges of roof line; the skylights and high ceilings that will give the interior a light and airy feeling; the entrance;

community meeting room; bookstore; fireplace in periodical reading area; the bookstore; the County Recorder's office; the classroom areas; and the division of Children's Area from Adult Area by a wall constructed with a glass block that allows sight but not sound transmission between areas.)

Council Member Tate introduced members in the audience that have been part of the team who have worked on the design. He stated that the design being presented is the one that the team liked the best.

Mr. Noll stated that the group wanted the building to feel modern, using a traditional roof style so that it would not be a jarring structure imposed on the community.

There was discussion of the final color and building material choices, and the Council was informed that those decisions would be made later in the process and that the Council would have opportunity to provide input at this time.

Council Member Sellers complimented the designers on meeting the challenges of the design, taking into account the grade of the land. He wanted to make sure that the central circle in the design did not hinder the future expansion of the City Hall building. He stated that he liked the central circular area, felt it to be highly complimentary to the library, and would like to see it kept as a "quiet use" area; more passive than active in its uses. He did not want to see uses that were too intense which might betray the use of quiet space. He appreciated the design and liked what the designers achieved in hiding the mechanical equipment on the roof from view.

Council Members were complimentary on the interior design of the building; particularly the light and airy feel, the spaciousness, and the directional spine of the building which allows line of sight from the entry to the back of the library. The Council also liked the provision of an area for parents in the children's area to sit and read to their children.

Mayor Pro Tempore Carr expressed concern with the scale of the central circular courtyard area and the appropriateness of using it for community events. He felt that this type of use was more appropriate at the Community and Cultural Center.

Council Members Tate and Sellers expressed their agreement on the issue of making sure uses of the central area are passive.

Mr. Advani explained that the courtyard design choices were controlled by the grading issues involved. The circular design allows for elimination of steps and allows handicapped access to both library and city hall. The soft scape areas help reduce costs by reducing the amount of pavement, and this also makes the area visually appealing. He said that the 25-foot wide walkway was acceptable when empty and also functions well when full. However, should the Council wish, the scale can be manipulated to make it narrower.

Council Member Chang stated that she likes the circular courtyard, and the emphasis on the view of El Toro that the design showcases. Council Member Carr expressed his agreement.

Recreation Director Spier requested direction from the Council Members in order to move forward with the project.

**Actions:** On a motion by Council Member Chang and seconded by Council Member Tate, the City Council unanimously (4-0 with Mayor Kennedy absent): 1) **Received** Presentation by Noll & Tam Architects on Library Project Site Design and Elevations; 2) **Approved** the Conceptual Plans Including Elevations; and 2) **Directed** Staff to Proceed with the Schematic Design Phase.

### ***City Council Action***

**CLOSED SESSIONS:**

City Attorney/Agency Counsel Leichter announced closed session items 1-5. She noted that Item 1 was based on threats of litigation contained in a January 22, 2002 conversation between City employee Angela Rivera and Ricardo Zamora; and a January 25, 2002 conversation between David Bischoff and Franz Steiner.

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

### Significant Exposure to Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 4

***City Council and Redevelopment Agency Action***

2.

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION:**

## CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority: Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)

Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property)

City Negotiators: Agency Members; Executive Director; Agency Counsel; F. Gale Conner, special counsel; Rutan & Tucker, special counsel

Case Name: San Jose Christian College v. City of Morgan Hill

Case Numbers: USDC Northern California No. C01-20857 RMW

Closed Session Topic: Potential Existing Litigation/Real Estate Negotiations

3.

## CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATOR

Legal Authority: Government Code 54956.8

Real Property Involved: 8.65 acre parcel located approximately 431± feet north of Dunne Avenue,  
between Condit Road and Highway 101 (APN 728-17-019)

Negotiating Parties:  
For City/Agency: City Manager/Executive Director; City Attorney/Agency Counsel;  
Director of Business Assistance & Housing Services

For Property Owners: Horizon Land Inc.

Closed Session Topic: Acquisition of Real Property

**4.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority: Government Code section 54956.9(a)

Name of Case: Hacienda Valley Mobile Estates v. City of Morgan Hill et al.

Case No: C 01-20976 PVT, United States District Court, Northern District of  
California

Attendees: City Council, City Manager, City Attorney

**5.**

**CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATOR**

Legal Authority: Government Code 54956.8

Real Property Involved: Lot 28 of Catherine Dunne Ranch, Map No. 7 located at 1250 Barrett  
Avenue (APN 817-13-017)

Negotiating Parties:  
For City/Agency: City Manager/Executive Director; City Attorney/Agency Counsel;  
Director of Business Assistance & Housing Services

For Property Owners: Virginia Lomanto Trustee

Closed Session Topic: Acquisition of Real Property

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor Pro Tempore/Agency Member Carr opened the closed session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION:**

Mayor Pro Tempore/Agency Member Carr adjourned the meeting to closed session at 6:32 p.m.

**RECONVENE**

Mayor Pro Tempore/Agency Member Carr reconvened the meeting at 7:05 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Mayor Pro Tempore/Agency Member Carr announced that no reportable action was taken on the above listed closed session items and that the City Council/Agency Commission would reconvene to conduct its closed session discussions at the conclusion of this evening's agenda.

## **SILENT INVOCATION**

## **PLEDGE OF ALLEGIANCE**

At the invitation of Mayor Pro Tempore/Agency Member Carr, City Clerk/Agency Secretary Torrez led the Pledge of Allegiance.

## **PROCLAMATION**

Mayor Pro Tempore Carr presented a Proclamation to Shewta Sengh and Zera Bootwahla, Co Presidents Live Oak High School Chapter, Future Business Leaders of America, declaring February 10-16, 2002 as *Future Business Leaders of America Week*.

## **CITY COUNCIL REPORT**

Council Member Tate reported on the following: 1) The City Council held a workshop this evening and approved the preliminary design for the library and directed the architect to commence with the detailed design in order to move forward with the next step. This was a culmination of over a year's work, working with the Library Building Committee, Library Commission, Joint Powers Authority and the Morgan Hill Unified School District. He felt that it has been a great collaborative effort to get this far. The City will be entering into a competition with many other communities to try to obtain Proposition 14 monies, a bond act passed to fund libraries that are in partnerships with School Districts. It was his belief that the City would win the competition. 2) Two weeks ago, the City Council reviewed the draft update Fire Master Plan. The next step is for staff to return with an implementation plan that calls for the building of a new fire station as well as adding staff. He said that everyone has been reminded about the importance of safety services in the community. 3) Last week, Council Member Sellers kicked off the Downtown Task Force, of which he is a member. He indicated that this would be a six month exciting effort with a large number of community members involved. He felt that the vision of the Task Force is already shared and that it would take six months to bring it to focus. 4) Morgan Hill YES, Youth Empowered for Success. This effort was kicked off by Mayor Kennedy and was called the Morgan Hill Youth Health and Safety Initiative. He indicated that the name was recently changed to Morgan Hill YES because this is more in keeping with what the City is trying to do with our youth. He indicated that this is a joint project with Project Cornerstone who supports the 40 developmental assets (high correlation between the kids having these assets and whether they will be successful in their future life). This group is trying to get all the organizations to recognize that building assets are something that should be incorporated into what is already being done. He stated that in order to create a forum where organizations who deal with youth can interchange success stories, a breakfast is being planned at Anritsu on Friday, February 8 from 7:30 - 9:00 a.m., with youth serving organizations being brought together to address success stories. It is proposed to make this an ongoing quarterly meeting in order to empower youths for success.

### **CITY MANAGER'S REPORT**

City Manager Tewes reported that during the months of November and December, the Community Center got a little behind with a series of rain days, noting that the project is slowly catching up. He indicated that the foundation for the Gavilan College building was poured recently, with the foundation being poured next week for the Community Center. He stated that in a few weeks, the City Council would be asked to review the construction drawings for the playhouse so that staff can go out to bid for the project. He said that it is anticipated that the Community Center would open in November 2002.

### **CITY ATTORNEY'S REPORT**

City Attorney Leichter stated that she did not have a City Attorney's report to present this evening.

### **PUBLIC COMMENT**

Mayor Pro Tempore/Agency Member Carr opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR**

Council Member Chang requested that items 3 and 6 be removed from the Consent Calendar.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar items 2, 4, 5 and 7 as follows:*

2.        **DONATION OF SURPLUS FURNITURE**

**Action:** **Directed** Staff to Make Furniture Available to the YMCA.

4.        **APPROVAL OF PROFESSIONAL SERVICES CONTRACT FOR PRELIMINARY ENGINEERING AND PERMIT PROCESSING FOR THE MADRONE/MONTEREY/UPRR INTERSECTION**

**Action:** **Authorized** the City Manager to Execute the City's Standard Professional Services Agreement with Mark Thomas & Company Inc. for Preliminary Design and Permit Processing Services in an Amount Not-to-exceed \$34,850, Subject to City Attorney Review and Approval.

5.        **MITIGATED NEGATIVE DECLARATION FOR THE BOYS RANCH RESERVOIR**

**#3**

**Action:** Approved the Mitigated Negative Declaration for the Boys Ranch Reservoir #3.

**7. SUBDIVISION APPLICATION SD 01-06: CENTRAL - CENTRAL PARK**

**Action:** Took No Action, Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.

**3. AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF RUTAN AND TUCKER**

Council Member Chang requested the identification of the law suit to be represented.

City Attorney Leichter stated that the request is in connection with two law suits filed by San Jose Christian College against the City of Morgan Hill regarding the rezoning of the former St. Louise Hospital site. She indicated that the City Council originally had a contract for \$50,000 which was sufficient to get the City through the first round of the State court law suit that was dismissed in the City's favor in October 2001. However, in September 2001, San Jose Christian filed a federal action in the United States District Court. She indicated that the current contract is insufficient to cover this case, particularly since the San Jose Christian College has propounded extensive interrogatories and document requests against the City. Staff is recommending that the contract amount be increased by \$75,000 to cover the cost of defending the city in the federal court law suit.

**Actions:** On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Kennedy absent: 1) Authorized the City Manager to Execute the Amendment to Agreement with the Law Firm of Rutan and Tucker; and 2) Appropriated \$75,000 from the General Fund to the City Attorney's Budget.

**6. REIMBURSEMENT TO MORGAN MEADOWS ASSOCIATES, LLC FOR MEDIAN IMPROVEMENTS AND PAVEMENT RECONSTRUCTION ON EAST DUNNE AVENUE AND HILL ROAD**

Council Member Chang stepped down from discussion of Agenda Item 6 due to a potential conflict of interest.

**Actions:** On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 3-1-1 vote with Council Member Chang abstaining and Mayor Kennedy absent: 1) Appropriated \$232,332 From the Current Year Unappropriated Traffic Impact Fee Fund for This Reimbursement; and 2) Authorized Reimbursement of \$232,332 for Median Improvements and Pavement Reconstruction on East Dunne Avenue and Hill Road to Morgan Meadows Associates, LLC.

Council Member Chang resumed her seat on the dais.

## ***City Council & Redevelopment Agency Action***

**Action:**      *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Commission, on a 4-0 vote with Mayor/Chairman Kennedy absent, **Approved** Consent Calendar Items 8-11 as follows:*

### **8.      POLICE OFFICER HOUSING ASSISTANCE PROGRAM AND PROPOSED LOAN** **Actions:**

#### **Redevelopment Agency Action:**

1.      **Increased** the Maximum Purchase Price under the Police Officer Housing Assistance Program to \$550,000, and the Maximum Agency Loan from \$50,000 to \$60,000, or 11% of the Purchase Price, Whichever is less.

#### **City Council Action:**

2.      **Approved** a Loan of Up to \$60,000 to the Chief of Police to Assist in Acquiring a Residence in Morgan Hill Based on Applicable Portions of the Police Officer Housing Assistance Program; and
3.      **Appropriated** \$60,000 from the City's General Fund Unreserved Fund Balance.

### **9.      JOINT SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES FOR JANUARY 23, 2002**

**Action:** **Approved** the Minutes as Written.

### **10.     JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR JANUARY 26, 2002**

**Action:** **Approved** the Minutes as Written.

### **11.     JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR JANUARY 26, 2002 (CLOSED SESSIONS)**

**Action:** **Approved** the Minutes as Written.



## ***City Council Action***

**Action:**        *It was the consensus of the City Council/Agency Commission to consider agenda items 18, 19 and 16 at this time.*

### **SECOND READING OF ORDINANCES**

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Chang, the City Council **Adopted** the following Ordinances as follows:*

**18.    ADOPT ORDINANCE NO. 1543 NEW SERIES**

*An Ordinance of the City Council of the City of Morgan Hill Approving an Amendment to Ordinance No. 1527, New Series, to Amend the Development Agreement for Application MP-00-05: Nina Lane - Shaw to Allow for a Six-month Extension of Time (APN 817-60-20) by the following roll call vote: AYES: Carr, Chang, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Kennedy.*

**19.    ADOPT ORDINANCE NO. 1544 NEW SERIES**

*An Ordinance of the City Council of the City of Morgan Hill Approving a Zoning Amendment to Establish a Precise Development Plan and Design Guidelines for a PUD District on the West Side of Condit Road, Between Dunne and Tennant Avenues (APNs 817-12-003, 004, 016 & 017 and APNs 817-13-019, 020, 021, 022, 024, 026, 027, 029, 030, 031, 032, 034 & 035) by the following roll call vote: AYES: Carr, Chang, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Kennedy.*

### **OTHER BUSINESS**

**16.    REVIEW OF THE SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT REPORT (EIR) FOR THE SECOND COMPREHENSIVE HIGH SCHOOL**

Planning Manager Rowe presented the staff report and identified the following deficiencies in the report: 1) biological resource section on burrowing owls. The mitigation contained in the EIR only requires the preconstruction survey to be conducted 30 days prior to grading or construction. Staff is recommending that the report incorporate the same protocols and mitigations that the City has adopted in its agreement with the Department of Fish and Game (assess the impact of the lost of owl habitat and provide provision for replacement of habitat). 2) Noise - The new school facility to be located adjacent to the Hacienda Valley Mobile Home Park and across the street from the Madrone Park. The report is recommending that amplified music be allowed between the hours of 7:00 a.m. and 10:00 p.m. The Planning Commission felt that 7:00 a.m. was too early and recommended an 8:00 a.m. or later start time. 3) The report also includes mitigations such as limiting speed limits, installation of speed bumps, and control traffic noise in the parking lot. Staff recommends

examination of other noises to be generated such as the decibel levels from car radios, slamming doors, etc. 4) Under the traffic and circulation, the study calls for a traffic signal to be installed at Burnett Avenue. He noted that the EIR does not require mitigations but only has a recommendation that the area be monitored. The report does not determine that if at some point in time, the traffic signal would need to be installed, it does not indicate who would be responsible for installation or when the signal would be installed. Staff recommends that this be incorporated as a mitigation to the environmental report. Staff recommended that the traffic report be updated to evaluate change in background conditions, noting that the City adopted a new general plan in 2001 and a new level service standard of D+ for street intersections.

Mayor Pro Tempore Carr noted that staff has indicated the need to update the traffic analysis because of changes that have occurred based on the General Plan and other issues/development. He read that one of the assumptions was that Highway 101 would not be widened until 2004, noting that this timeline has been moved up. Also, there was an assumption that the widening of Highway 101 would be to six lanes and that it is now proposed to widen to eight lanes.

Planning Manager Rowe stated that impacts may balance out as there is new development in the area that is contributing to traffic that was not looked at under the cumulative conditions. On the other hand, the widening of Highway 101 and the widening of the lanes from four to eight lanes would result in a substantial reduction in the spill over traffic onto Monterey Road. He said that this may be a wash as far as balancing out but that it would be difficult to say until you look at the updated traffic study.

Council Member Chang inquired about the traffic between Monterey and Cochrane Roads. She indicated that staff showed her a study that reflects that at one point, the project would be at a Level of Service (LOS) F but that after Highway 101 is widened, it would be reduced to an LOS D. She requested that staff address LOS.

Planning Manager Rowe indicated that Council Member Chang was referring to the gateway project to be discussed later on the agenda. He stated that the traffic study for the gateway project included the high school in the list of projects under the cumulative analysis. He indicated that project impacts were included in the original EIR for this project. Therefore, the trips to be generated from the high school through the intersection were evaluated as part of the original EIR, noting that the intersection would be at LOS D with some additional mitigations once the freeway widening is completed.

Mayor Pro Tempore Carr opened the floor to public comments. No comments were offered.

Council Member Tate concurred with staff's recommendation and supported forwarding the concerns to the School District. He expressed concern with the lack of a traffic signal at the mobile home park location because this will be an intersection where there will be a heavy concentration

of senior drivers and younger drivers. He recommended that the City forward a strong recommendation that the signal light be installed with the construction of the high school. He said that he would be willing to work with the School District on how this gets done in terms of City assistance.

Council Member Sellers concurred with Council Member Tate's comments. He felt that traffic impacts were different from three years ago with the adoption of the General Plan and with the other changes that have occurred. He recommended that mitigations be identified for traffic at this time because of his continued concern that potential problems have not been identified and that we end up in a situation where the school is about to open and the issues are not resolved. He wanted to make sure that the EIR addresses the fact that mitigations are to be taken care of now.

Mayor Pro Tempore Carr stated that he drove through Burnett to understand the east/west entrances and the location of the mobile home parks. He inquired if there were other mitigations that the City could look at other than the installation of a traffic signal? He recollected from his days on the School Board that the District discussed moving the start time of the school back so that students traveling to school would avoid the morning commute time. Therefore, the impacts would not be as great. He said that he could not tell from reading the report whether this had been taken into consideration. He stated that the School District also discussed, with the last EIR, increasing busing service so that there would not be as many students driving to the site. He did not know if this was taken into account when the assumptions on impacts were made. He inquired as to the window period for traffic to be generated by the high school (e.g., 15, 20, or 30 minute window when students are driving to school). He inquired whether this small window of traffic necessitated the installation of a traffic signal at an expense to the School District whether there were other mitigations that can be looked at (e.g., school start time, additional busing service, alternative entrance to the school site from Monterey Road)? He felt that there may be other mitigations that could be discussed short of requiring the installation of a traffic signal.

Council Member Tate stated that he read the staff report that addressed the mitigation measures as recommended by DKS Associates, the traffic consultant hired by the School District. He felt that other alternatives would be preferable but if these are not looked at, you have to require a signal as recommended by the traffic consultant. As an alternative, another consultant could be brought in to look at traffic. He stated that he was basing his decision on what the experts were advising.

Council Member Sellers stated that he would agree to consider alternative mitigations.

City Manager Tewes indicated that the City Council could direct staff to send the School District comments on the EIR. He would begin the letter by stating that the study identifies impacts that need to be mitigated as required by CEQA. He noted that the traffic report has not yet identified how the impacts would be mitigated. It is staff's belief that a traffic signal is an appropriate mitigation but that the City's comment to the School District could be to recognize the impact and to adopt such

mitigation measures that would deal with the impacts, noting that two were recommended by the District's consultant and that there may be other mitigations.

Mayor Pro Tempore Carr agreed that 7:00 a.m. is not an acceptable time for noise from an amphitheater. He asked if there was a suggested start time to be proposed to the School District?

City Manager Tewes noted that staff is recommending an 8:00 a.m. start time.

Council Member Tate and Mayor Pro Tempore Carr stated their concurrence with an 8:00 a.m. or later start time.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Kennedy absent, **Approved** Report Addressing Deficiencies in the Supplemental Draft EIR and **Directed** the City Manager to Prepare the Appropriate Written Response to the School District.*

## **PUBLIC HEARINGS:**

### **12.     ZONING APPLICATION, ZA-01-05/EA-01-12: MONTEREY - SOUTH VALLEY DEVELOPERS (APN 764-10-004) Continued from January 9, 2001**

Director of Community Development Bischoff presented the staff report and informed the City Council that four letters/memos were received regarding this item that were not included in the packet: 1) memo from the Police Department addressing the issue of demand for police services for this type of facility; 2) letter from David Sweigert with an attention from Robert Shanteau regarding relating issues contained in the traffic analysis; 3) a letter from David Sweigert with an attached letter from Richard Norman regarding the distance between the gateway project and the potential site for the Catholic high school; and 4) a letter from Yarmella Kennett regarding gateway standards and traffic concerns.

Mr. Bischoff informed the City Council that the Gateway project is proposed to develop in as many as four different phases, noting that phase I would include the gas station, mini mart, carwash, improvements to the intersection at Cochrane and Monterey Road, second driveway access, and storm water retention. The Planning Commission recommends that the second phase of the project include either the retail center or the office center or both prior to issuance of a building permit for the fast food restaurant being proposed. He addressed the following potential impacts: burrowing owls, flooding, and traffic circulation. He indicated that the proposal would deviate from city standards with regards to: 1) height of the building; 2) front yard landscape setback; and 3) drive aisle width. He addressed the location of a convenience market in relationship to the proposed Catholic high school, noting that there is a question whether the high school project would proceed. He indicated that the environmental review prepared for the project, identified the following

potential impacts: biological resources (owls); flooding; and traffic circulation. He said that there are a total of 12 mitigation measures proposed for traffic. He indicated that staff would propose changes to mitigation measures G, H, and I. Mitigation Measure G makes reference to cost sharing for the construction of a raised median on Monterey Road. He stated that the median would need to be installed along with the various phases of the project. It was staff's belief that it was important, with phase I, that a median be installed past the driveway. When phase II and the second driveway is installed, staff would need to make sure that the median is installed to this point as well. Staff recommended that Condition G be amended to require that the median be constructed at the time of phase I or that the median be constructed with the timing of the various phases of the project and that credit or possible future reimbursement be given to the applicant as a result of payment of traffic impact fees. Mitigation H would require the cost to be paid up front and that there would be reimbursement in the future. Mitigation I extends the length of the existing two left lanes onto Monterey Road.

Mr. Bischoff informed the City Council that the City has received legal challenge from the Planning Commission's approval of a conditional use permit for the gasoline station/mini mart for this project based upon both CEQA and processing issues. Staff found that the appeal was not filed in a timely manner. However, all issues raised by the appellant, with respect to environmental issues and processing issues, can be addressed through the PUD hearing this evening. He indicated that staff intends to refer the use permit back to the Planning Commission for reconsideration should the City Council approve the PUD. He indicated that modifications to standards were approved with reduction from the front setback from 30' to 25' and allowing for the reduction of the drive aisle width from 30' to 25' feet. However, the Planning Commission does not recommend approval of the height of the tower element and signage.

At the request of Council Member Sellers, Mr. Bischoff addressed mitigations that would need to occur to mitigate potential flooding. He said that mitigation measures would be required to ensure that adjacent properties are not impacted any more than they would be without development.

Council Member Chang asked what type of fast food, restaurant, office or retail uses are being proposed? Mr. Bischoff responded that the applicant has indicated that he does not have a fast food restaurant nor specific tenants in line for the retail or office center at this time.

Council Member Chang said that should the project be in violation of city codes with regards to the adjacency of a convenience market to a school, what would need to occur? Mr. Bischoff stated that the project is not in violation of the code as the proposed convenience market is not sited within 1,000 feet from an existing school or school site designated by the Board of Education.

Council Member Tate noted that a mitigation measure suggests extending the left turn lanes north on Monterey Road, noting that these lanes were just extended.

Director of Public Works Ashcraft said that a memo dated February 5, 2002 to Planning Manager Rowe from Keith Higgins, traffic engineer, addresses access to the southerly drive approach of the center. He noted that since the study was written, the City extended the left turn lanes and switched Monterey Road lanes. Mr. Higgins suggests that in order to reduce potential conflicts between vehicles traveling through the lane merge and vehicles turning into the project site that the frontage of the project site be designated with an eight-foot shoulder and a four foot wide bike lane at a minimum. Mr. Higgins further recommends that the full 12-foot right turn lane be provided on the south bound Monterey Road approach to the southerly driveway based upon the design speed of 40 MPH and the right turn lane should be 315 feet in length. He felt that this concern would be mitigated as there is sufficient widening with appropriate stripping to create a right turn only lane. He indicated that there would be no left lane movements as the raised medians would preclude this movement.

Council Member Chang expressed concern with the one lane as she did not see enough room to add a right turn lane.

Director of Public Works Ashcraft stated that it was his belief that there was enough room to widen the lane within the existing right of way and pavement. Should staff find that there is not sufficient width, the applicant would need to widen the lane in the direction of their development. However, he felt that there was enough right of way available, even with the median.

Mayor Kennedy entered and took his seat on the dias.

Mayor Kennedy opened the public hearing.

Scott Schilling, applicant, introduced the gateway project development team as follows: Steve Schilling, South Valley Developers; Ivan Owlesy, Railroad Safety Specialist; George Garcia, architect for the Arco facility; Ken Wikerham, Arco; Robin Boyce, Arco; Martin Fineman, counsel for Arco; Michael Flarerty with Arco; and Bill McClintock, MH Engineering. He addressed the specifics of the project, noting that the site has been zoned commercial for over 30 years and remained commercial in the recent updated general plan. He felt that the project met the goals of the updated general plan, including non franchise architecture, improving the appearance of commercial development by placing parking to the rear, noting that sound walls are not proposed for the project. The objectives of the project were to create a gateway statement from an architectural and land use stand point, providing for a variety of uses. He said that the site has to be economically viable and provide uses that are neighborhood friendly. He created a project that is sensitive to the neighborhood and the surrounding commercial uses. He noted that single story structures are proposed and designed within PUD guidelines with the exception of the office building portion of the site. He indicated that he has agreed to reduce the tower element to 35'. He informed the City Council that the project has adhered to the strict PUD guidelines. The architectural theme is consistent throughout the project. He is proposing significant safety improvements in addition to the

improvements which are not included as conditions for the first phase of development. He addressed two issues raised by staff in their presentation: 1) greenbelt along the Monterey corridor. He stated the right-of-way and the curb line are not consistent, noting the curb moves away from the property line. He felt the project exceeds code requirements if you take a weighted average across the entire frontage. 2) Keith Higgins' letter regarding a pull in right turn lane. He felt there was ample room to meet the 30' setback, even if he has to cut into an area to achieve additional room for the right turn in lane.

Ivan Owlsey, retired manager of safety and rules with Santa Fe Railroad, addressed railroad safety. He stated he was responsible for investigating and determining causes of accidents, designed systems, developed rules, and administered safety programs. He is trained and certified in OSHA regulations, federal railroad administration and public utility commission regulations as they apply to railroad practices and operations. He stated he has visited the site and performed an assessment. He said pedestrians are currently encroaching onto the railroad right of way without safety controls in place. There is no fencing to deter the encroachment and no signalized intersections for pedestrian crossing in areas to gain access east and west across Monterey Road. He identified conditions being offered by the project proponent as follows: 1) modify signal at Cochrane and Monterey to allow safe pedestrian traffic to and from project and to the business park located on the east side; 2) construct 8' wrought iron fence along the right of way continuously along the entire project, extending approximately 800' north beyond the project; 3) construction of sidewalks along the east side; and 4) install signal light at Monterey and Old Monterey Road with pedestrian crosswalks to facilitate entry to the underpass and across the street. It was his belief the combination of protection from exposure to train traffic along with providing sidewalks, crosswalks and signalization for safe access in both directions is an excellent design. He requested the Council endorse the changes.

George Garcia, Arco project architect, stated he has been working on the design for this project approximately a year. He has worked closely with Mr. Schilling to develop an architectural style that would be compatible with the gateway center and with the architectural guidelines before the City Council. He stated the gas station, as designed, is the most elaborate and detailed station that he has designed for Arco, indicating he received a lot of slack for this because it would be the most expensive gas station designed for Arco. He said the project has been designed in conjunction with the center in order to be architectural cohesive as a unit. He presented a power point perspective of the architectural design. He indicated the cost for the project is estimated at \$120/square foot to construct the convenience market, noting this is the highest standard design for the site, following the architectural guidelines for the PUD. He said the PUD requires 36" boxed sycamore trees (8-10 feet tall). He indicated the trees have been represented at approximately 4-5 years of growth and 12-15 feet in height.

Ken Wikerham, manager of site acquisition for the northwest region, stated that Arco wants to build and develop future projects in the bay area in the next few years. He said this project would cost approximately \$300,000 to \$400,000 more than franchise architecture because of the architectural

changes, landscaping and other treatments being required. This is a special project based on the city's design requirements and fitting into a setting. He felt competition is healthy and is neglected in the bay area. He indicated this would be a company facility, therefore, Arco would be managers of the facility. Arco managers and trainees are sent to school and would be trained on the privilege of selling beer and wine, noting Arco has won awards from MADD, highway patrol and sheriffs departments because of training programs relating to alcohol and the "Do Not Drink and Drive" campaign. Arco would be monitoring the sale of alcohol and would not tolerate any deviations from the law or ethics as they would like to be good citizens. He estimated revenues to be generated to the City from Arco would be approximately \$75,000 - \$100,000 per year in sales tax.

Council Member Sellers stated that the part of the business component he is most interested in is the relationship between the gas station and the AM/PM market.

Mr. Wikerham stated the AM/PM franchise is over 20 years old and is probably the only mature franchise in the petroleum business in the western states. He clarified that the AM/PM would be a snack and convenience store, not an eating facility. He indicated Arco is not building new projects without AM/PM markets because it needs the multiple streams of revenue to support the \$3 million being proposed in this community.

Mayor Pro Tempore Carr inquired whether the interest of Arco in Morgan Hill is attributed to the growth of the city needing additional gas outlets or is it because the Arco product can compete in this market with today's existing station and population?

Mr. Wikerham responded that there are three areas in the bay that have growth potential and that Arco would like to be where the growth is. He felt the South Bay, East Bay and the Napa/Santa Rosa areas are ones that would be subject to growth. Arco would like to invest in an area that grows with the community, bringing a quality service to the community, noting that this would be a big investment. He expects to draw traffic from the freeway and serve local residents. He said Morgan Hill has a lot of individuals commuting through Morgan Hill, therefore, he anticipates regional traffic patronizing the Arco station. He clarified that this would be a 24-hour AM/PM facility and 24-hour gas station, noting that 99.9 percent of Arco facilities are 24-hour facilities due to security as it would be a well lit maintained area and would discourage loitering.

Laura Plum, Mothers Against Drunk Driving (MADD), stated that last year 16,653 people died in drunk driving crashes with 40% being youth between the ages of 18 and 24. The mission of MADD is to stop drunk driving, to help the victims of the violent crime and to prevent under age drinking. Should a youth get a hold of alcohol, it would cost tax payers approximately \$1 million per fatality in a drunk driving crash. Approval of the project would result in the City offering alcohol in a general vicinity of a school. She said that by allowing and condoning alcohol sale in a direct correlation to a school is undermining the City's Youth Health and Safety program that the City is endorsing and that it is not sending a clear message to the community's youth.



Rocke Garcia, 100 East Third Street, developer of the Capriano Project, north of this project, stated his support of the project. He stated that he has no financial interests in the project. He said that Mr. Schilling approached him before commencing the project, noting that he wanted to be a good neighbor and make the design compatible with development in the Madrone area. It was his belief that he achieved this goal. He stated he served on the General Plan committee who were against "franchise architecture." He felt the proposal before the City Council is very much non franchise design and that it is an excellent design, one the city would be proud of.

Rogelio Balderas, 18520 Del Monte Avenue, stated his opposition to the AM/PM market as well as the sale of fast food. He said that the bottom line is that the AM/PM market would offer the sale of alcohol, tobacco and junk food. He indicated he was a prevention program analyst with the County Public Health Department of Alcohol and Drug Programs and that he is looking at ways of reducing the incidence and prevalence of alcohol related problems. He indicated there is an equation which states that there is a direct correlation between the availability of alcohol in the community and problems associated with its consumption. He informed the Council that the County performed an alcohol availability study. The study demonstrated there is a direct correlation with alcohol outlets and problems. He said there are a number of alcohol outlets in the vicinity, noting there is a protest against the application of the license. He felt that the public health and safety are at risk. As a parent and resident, he has concerns about granting a license to an establishment that is already saturated, noting that a high school is proposed to be constructed in the area.

David Sweigert indicated he is representing a number of property owners in the area who have significant concerns about this project. He stated that the concerns have been addressed in letters to City Council, addressing some of the environmental issues in letters from Mr. Shanteau and Mr. Norman. The opposition to the project is due to the fact that it is "too fast, too much and too little." He felt the project has been on the fast track through the city's processing procedure, noting that the matter on the use permit was set for public hearing before the Planning Commission only three weeks after the submittal of the application. The Negative Declaration was circulated before the environmental review was completed. He stated the project has undergone some significant changes and that there have been mitigation measures that have evolved and developed, the most recent being seen this evening. He did not believe this was consistent with what the California Environmental Quality Act (CEQA) requires. CEQA requires that the information be put together and packaged so that the Council has the information when it makes its decision and that the public has the opportunity to review the information before a decision is made. He noted that new conditions and mitigation measures are being proposed this evening to address environmental impacts raised. He felt this was a direct contravention of CEQA.

Mr. Sweigert felt the project was too much for the site, noting that the applicant is requesting significant variations from normal standards, including front and rear setbacks. He indicated the Valley Transportation Authority (VTA) requested a 25-foot setback from the property line, noting that the road would be just a little over 5 feet from the setback. He asked what would happen to

circulation should the project encroach into the roadway should there be a need to widen the tracks. He felt that significant issues have not been addressed, that a project which has this many exceptions from the normal standards must be environmentally suspect, and too little information is being provided up-front. The project description has undergone changes from what was included when the Negative Declaration was circulated. The project description contained in the Negative Declaration did not apprise the public of the full impact of development on this site. Another important issue that needs to be addressed is the loss of the site as a Caltrain station as the site has been identified as a train station in the master plan. This is a land use issue, incompatibility issue and inconsistency with land use plan documents that have not been addressed in the environmental review. He stated there were also significant impacts related to land use compatibility and consistency with general plan provisions that protect residential neighborhoods. With the constant evolving nature of this project and the mitigation measures, he did not believe the public has had the full opportunity to review the environmental impacts and the mitigation measures proposed for the project, nor alternatives discussed to this project. He requested the project be denied as currently proposed or that the City Council take the legally required step and require a full blown environmental impact report for the project.

Eugene Vanella, 160 Sanchez Drive, stated he was opposed to the project as the project across the track would be a temptation to his children and the neighborhood children, noting that a fence never stopped him as a kid. He expressed concern with the increased noise level/lighting at night and the chance of teenagers parking behind office buildings. He did not believe the City adequately addressed the flood control problems, noting the creek runs underneath Sanchez Drive. He also expressed concern with increased foot traffic on his street. He stated the neighborhood has a park and expressed concern that transients would try to access the AM/PM market and hang out in the park.

Ingrid McNulty, 18575 Old Monterey Road, wanted to know why the general plan guidelines were ignored and were not mitigated. She stated that policies were written to protect the gateways to show the City's goals and show pride in Morgan Hill. She did not believe this includes convenience stores or gas stations in gateway areas. She presented copies of an editorial from Mark Grzn, former member of the General Plan Task Force, in which he refers to Policies 10b, 10.5, 12b, 14.1 and 14.3. She stated that she purchased a copy of the City's General Plan and referred to Policies 6b (encourage the clustering of residential units to provide open space and recreation, and to provide buffer areas between different land uses); 6c (evaluate potential impacts of development project on adjacent uses); 8a (maintain distinct boundaries between commercial and residential neighborhoods, noting it does not preclude residential uses within commercial areas as part of mixed use projects or designated mixed used areas; and 9c (amend zoning ordinance to prohibit convenient commercial uses in residential neighborhoods).

Robert Quill, 18575 Old Monterey Road, stated area residents are opposed to the proposed gateway project as they reside in the neighborhood. The residents have been characterized as ineffective

parents by some individuals, thus the problem with the development. He stated the residents are angry for the way they were treated in the process up to now. Before being involved and voicing concerns, he felt that impossible hurdles were placed in front of them. The residents were unaware of the rules of development but indicated they were fast learners. He felt that responsible decisions need to have as much information as possible to avoid making serious mistakes. He stated that the neighborhood residents are not opposed to development nor Arco. However, the neighbors chose to live in Morgan Hill and do not want to be like San Jose. He felt the gateway should reflect community pride. The residents feel there are better uses for this location and encouraged the City Council to help find the appropriate uses.

Sarah Johnson spoke on behalf of the neighborhood and stated she was not happy with the proposed development for the following reasons: 1) location adjacent to homes and school; 2) safety (children will try to jump fence and cross railroad tracks and possibly get killed by a train); 3) intersections lead to the neighborhood and may disturb the daily routine by causing heavy foot and vehicle traffic. She said most individuals, especially kids, will want to take short cuts. This would mean crossing the tracks, noting that a fence can be jumped. 4) A 24-hour store that sells alcohol may attract gangs and impact the new high school. She requested the City Council make the right decision for the people in Morgan Hill.

Sherry Vanella, 160 Sanchez Drive, said homes are located within 50 feet from the gas station and that traffic coming into Morgan Hill exceed 15 mph. She expressed concern with vehicles speeding and merging onto a one lane road. She felt the children of the neighborhood would have temptation to cross the railroad track. She expressed concern with a 24-hour operation, noting there are other businesses in Morgan Hill that are not open 24-hours a day. She said that development would add problems to a neighborhood that needs help and police supervision. She felt the main issue is that the applicant is trying to camouflage the deeper problem; the 24-hour sale of alcohol. She felt Morgan Hill is for the people and not for developers, noting that the residents are the Council's constituents.

Linda Hartman, 120 Berkshire, indicated area residents are upset with the proposed development. She stated that a positive San Francisco Examiner news article in October 1997 made her realize that she purchased a great home in a wonderful town. She said Morgan Hill has always been in charge of planning and that the public is aware of environmental and safety issues with the results being a beautiful town. She did believe an AM/PM mini mart and paradise are synonymous. The area residents agree there should be a gateway into Morgan Hill and also believe that the AM/PM is not the type of gateway that the city should have. She felt an AM/PM is a business that is very unsafe for children as children will find a way to get to the project. Also, the sale of alcohol would entice undesirables to frequent this area. She said the developer has shown the area residents the proposed wrought iron fence that might be built, noting it resembles a cemetery fence. She said there are a number of other concerns but the bottom line is the safety of the children. She stated she could not see the beauty of the proposed gateway project and felt the city should keep its charm.

Mark Jensen, 675 East Central Avenue, stated his support of the gateway project. He said he works for a 50-person company in Sutter Park. He felt the name "Gateway" is appropriate. He said the first impression of those entering the area is the El Capri restaurant property and the dirt parking lot is used as a part time used car lot. He did not believe this was an image the city wants. He felt individuals entering the city need a gateway and felt this project is a great opportunity to take advantage of a planned commercial development versus a hodgepodge commercial development. He felt the impressions of Morgan Hill should be one of a modern and charming city. He did not believe you see this when you enter the city. He felt the area is under served for these types of businesses and felt this was a good opportunity to spurn economic growth.

Gary Genest, 18515 Old Monterey Road, inquired if anyone would be in support of a 24-hour gasoline station, mini market and/or carwash being built 110 feet from one's front door? He said area residents have met with Mr. Schilling and that it was stated that they understood why the residents might not want a gas station so close to their homes but were hoping to find a solution to make this acceptable to the residents. He said area residents do not want their living spaces polluted by light and the sounds of a 24-hour operation.

Peter Anderson, 17440 Ringel Drive, representing the Chamber of Commerce Economic Development Committee, informed the City Council that the Committee recently had the opportunity to review the project under consideration this evening. The Committee has found that the proposed project conforms with the General Plan and that the requested uses are permitted under the general commercial zoning district. The Committee finds that the project conforms with the requirements laid out by the City and there are attributes which make it a desirable project for the community. Therefore, the Committee supports the project.

Bob Gadsby, 15310 Venetian Way, stated his support of the project and the PUD zoning of the site as he understands the uses are consistent with the underlying zoning. He stated he is knowledgeable of the projects built by the Schillings. Regarding the safety issues raised this evening, he noted the existing pathways crossing the railroad tracks. He felt the neighborhood should be pleased with the construction of an eight-foot fence to stop the existing traffic from crossing the railroad tracks. He stated his support of the installation of a signal at Old Monterey and Monterey Road. He felt this project would set the tone for any project to be built to the north and would set a standard. He was also supportive of the Arco gas station as competition in gas would benefit the residents and the City coffers.

Ramona Etchebarne, 17387 Serene Drive, stated she viewed a presentation by Mr. Schilling on the gateway project. She stated she liked the project, as it is a beautiful project and would be a great gateway into Morgan Hill. Also, the construction of an eight-foot fence along with tree plantings would keep individuals from crossing the railroad tracks. She supported the project as it would make Morgan Hill more beautiful than it is now.

Christine Guisiane, 25 West First Street, informed the City Council she is representing the staff and Economic Development Committee of the Morgan Hill Chamber of Commerce, stating support of the project and the zoning application for South Valley Developers Gateway Center. It is felt the project addressed all the requirements set forth by the City of Morgan Hill and is a good gateway project. She noted the project met zoning regulations, designed to meet the requirements of gateway projects, and gives an attractive entrance into the Morgan Hill community. It is believed the project addresses all safety issues identified by concerned residents with the installation of fencing along the railroad tracks, installation of traffic signals and crossways, pedestrian side walks flooding/drainage issues, minimizes cross traffic along Monterey Road and decreases the blight at the entrance to the community.

Mike Rauschnot, 650 Sparhawk Drive, noted children do not have a way to cross Monterey Road other than going over the railroad tracks. He stated a traffic signal is important as it is a dangerous intersection. He felt this project is a good idea.

Joe Locson, 375 Calle Asta, stated his support of the business center as the community would benefit for the following reasons: 1) signalization of the intersection of Monterey Road and Old Monterey Road. A new signal light would make it easy and safer for both vehicles and pedestrians, slowing traffic down. 2) The existing site needs improvement as it has been dirt and weeds for some time. 3) The new business center would be built with pride and classic architecture. He stated he supported an Arco gas station coming into the community.

Martin Fineman informed the City Council he is representing Arco in support of the project. He stated the project would correct a blighted situation and be replaced by a project would bring substantial investment to the community (e.g., construction, jobs, convenience, services, sales and tax revenues). He addressed the number of issues raised by letters submitted by the Neighbors Against the Gateway group. One of the letters raised questions about CEQA issues and their view there is a need for an environmental impact report (EIR). He noted staff has indicated that an EIR would not be necessary. He indicated the property has been zoned for general commercial uses, including the present use, for more than 30 years. The project has received permits and approval from the Air Quality Board. He said the Regional Water Quality Board has reviewed the project and has determined it does not have jurisdiction over the project. An expanded initial study has been conducted with regard to environmental matters and that a mitigated negative declaration is proposed and being voted upon by the City Council. It was his belief that the EIR issue is flawed both legally and factually. He stated a second issue raised in recent letters to the City Council is that of competition relating to screening of the canopy. He felt the real opponent to the project is the owner/operator of the nearby Chevron gas station. The issue being raised is that there is supposed to be a harm to competition because at the time the Chevron station was built, there was a preference for a reverse layout to gas stations and mini mart configurations and that the preference has been changed. He felt the canopy of the Chevron gas station is well exposed and very prominent to the street and is an eyesore. He stated he received a letter this afternoon relating to the traffic

report and clarified that what has been presented by the neighbors against the project is not a traffic report but mis informed comments to the traffic report.

Michael Flaherty, zoning and development manager for Arco, stated the project's design is the finest for a service station not only from a safety and layout stand point but from an architectural stand point. He felt the design meets the definition of a gateway site. Regarding safety, he stated he has two letters from the police department supporting the design and that this would be a safe site for the sale of beer and wine. He also has a study prepared by Purdue University addressing some of the concerns, specifically with beer and drinking and driving. He stated that this is a big concern to Arco. He stated Arco is involved with MADD and with high schools through a program called "Every Five Minutes" where individuals are killed every five minutes throughout the United States. Of the few drinking and driving incidents, only 99.9% of the incidents occur by individuals who are visiting or drinking alcohol at bars and restaurants. Approximately 1% occurs as part of off site consumption locations such as grocery stores and convenience markets. He stated he is working to clarify this issue. He stated Arco has an outstanding reputation and record in the industry and that he would like to bring Arco to Morgan Hill.

John Brodersen stated he started working with the City approximately five years ago, building two gas stations in Morgan Hill. He stated the last gas station was constructed in a gateway area. He worked with the planning department extensively, noting that a couple of the issues that he had to deal with was a 30' setback and a building on the corner. He stated he was not opposed to the project nor the gasoline station. He was here to speak about fairness, stating it was not fair to make him put his canopy behind the building. He felt his business would be blocked out with a proposed In and Out and with the future Toeniskoetter building at the corner. He fought hard to place his canopy on the corner but eventually agreed to place the building on the corner. He was told by planning that anyone that comes in after him would have to site a building on the street in gateway areas. He complied with the City's condition and that he did not believe it was fair to make him place his building on the corner and allow a corporation to place their canopy on the corner. He stated that he spent more money on the design of his project than is being proposed by Arco. He said Arco's architect raised the issue of placing a building on the corner constitutes a safety concern. He stated that his business has not had a safety issue with the building sited on the corner.

Robert Tas, 18435 Old Monterey Road, member of the community west of the development, stated that neighbors met with South Valley Developers approximately three weeks ago. He said there was a commitment made at the meeting that he did not hear addressed this evening; placing the carwash on the Monterey side of the development versus the west side of the development. He felt that siting the carwash away from the residents would be important as there would be a lot of noise associated with the use. He informed the City Council that Mr. Schilling committed that he would site the carwash closer to Monterey Road. The second commitment made was to reduce the carwash hours to address noise considerations. Another issue to be investigated was the reduction in time that alcohol could be sold. He felt that it should be obvious that the neighborhood does not want this

development. Concerns are crime, noise, nuisance issues associated with alcohol sales, and traffic safety. He said that it is not clear to him the benefit to the community of having another gas station, carwash, and fast food place. He recommended the approval of other original uses such as a speciality supermarket or a Trader Joes; uses that the community can benefit from and not something that is already here. He felt that the neighborhood is getting a bad deal and requested that the Council vote against the project.

Katie Nicca expressed the following concerns: 1) groundwater contamination associated with a gas leak; 2) alcohol to be sold at the mini market, noting that there are other places in Morgan Hill that sell alcohol. 3) Safety concern associated with the attraction of homeless people with the sale of alcohol. 4) There are other fast food restaurants in Morgan Hill and recommended that a park be built instead. She felt that Morgan Hill should be a better place to live and not a better place for business.

Ron Medina, 18395 Old Monterey Road, stated that he is a resident against the project even though it would be a good development for the city. He said that as you enter the city and approach the railroad, it is a down slope and up slope, creating a blind spot. Installation of a single light at the intersection of Old Monterey and Monterey Road is a good idea and would slow traffic down. However, traffic would be increased by a 24-hour operation, questioning the sell of alcohol and fast food mart.

No further comments being offered, the public hearing was closed.

Council Member Tate stated that he is the City Council's liaison member to the Economic Development Committee and indicated that he did not attend the meeting where Mr. Schilling made his presentation because he knew that the project would be coming before the City Council. He said that it was his understanding that the signalization of Monterey/Old Monterey was too close if you are coming from under the railroad and that it had to be moved south. Now, there is a proposal to signalize the intersection and questioned if it was a safe situation.

City Manager Tewes stated that the Council asked staff to think about potential realignment of Old Monterey and Monterey intersection further south to make it safe. He said that it is possible, at an additional expense, to install synchronized advanced signal warning signs in the underpass so that individuals can have proper warning about the signal light coming up.

Director of Public Works Ashcraft stated that following the completion of the circulation of the new general plan, staff looked at traffic impact fees. He said that this is an intersection that needs to be signalized. Staff has looked at this in more detail with this application and that it is possible that Llagas Drive can be intersected to Monterey 500 feet south of Old Monterey, resulting in a Llagas Drive/Monterey intersection and dead ending Old Monterey in the near future. He said that an additional study would be needed.

Mayor Kennedy noted that one of the questions raised was a proposed site for a Caltrain station. He said that it was his understanding that the VTA took it out of the plan because of the close proximity to the other station and not wanting to have too many stations close together. He noted that another statement was made that VTA requested a 20' setback from the railroad track. He inquired as to the status of these two issues.

Planning Manager Rowe responded that the 20' setback relates to the building setback in the event that additional right of way is required. He said that landscaping could be affected by this. There has been discussion of reconfiguration of the parking lot if the project necessitated additional right of way. He noted that the buildings are situated toward the easterly side. Therefore, it would not preclude the ability to acquire additional right of way in the future, if needed.

Mr. Schilling indicated that the railroad right of way is approximately 75' and that there is room within the existing right of way to add a second track. He stated that the distance from the center line of the existing track to the canopy element is approximately 96' and that the buildings get further away as you go further down the site.

Director of Public Works Ashcraft said that the additional track is proposed on the west side of the existing railroad track.

Mayor Pro Tempore Carr said that the Council heard several comments about CEQA and the CEQA process and that the process was improperly used. He requested that staff address these concerns.

Director of Community Development Bischoff stated that staff took the conditional use permit for the gasoline station to the Planning Commission for review. He stated that the condition that would have required adherence to any CEQA requirement was not included as a condition of approval for the use permit. Therefore, there was an error and that this resulted in the comments before the City Council this evening. He indicated that the remedy to the error is to have a rehearing of the matter before the Planning Commission should the City Council decide to approve the PUD this evening. He stated that it is not staff's intent to rush the process. Although staff tries to provide good customer service and tries to minimize review periods and times, staff does not do so at the cost of public involvement. He informed the City Council that all residents within 300 feet received notice of the public hearing for the use permit and received notice of this evening's hearing. He apologized for the error committed but that it was his belief that all of the necessary CEQA documentation for the PUD has been prepared properly in advance of this evening's hearing. Should the City Council decide to approve the project, he said that the mitigations before it are sufficient to cover the impacts that have been identified. He stated that staff's environmental evaluation would not suggest that an EIR would be necessary as staff has identified impacts and that these impacts can be mitigated with the measures included in the packet.

Mayor Kennedy stated that earlier on in the process, he asked staff to look into the possibility of an



elevated pedestrian overcrossing. He said that there may be a limited amount of federal monies to encourage pedestrian and bicycle access. He asked staff if it has received feedback from the VTA or from Caltrain regarding funding?

Planning Manager Rowe said that he referred this inquiry to the City's representative on the CIP subcommittee, Carey Keaton, to inquire about the possibility of funding and that he has not heard back from him.

Council Member Tate addressed the concern raised by Mr. Sweigert about the rear setback being 10 feet and that the plans are only being shown at five feet.

Planning Manager Rowe informed the City Council that the PUD chapter of the zoning code talks about the perimeter area and that a 30' setback would be required adjacent to public rights of way and a minimum of 10' feet in other areas. He indicated that the applicant requested that the Planning Commission approve the reduction of the perimeter along the railroad track to 5' so that they would have sufficient area for the loop driveway. The Planning Commission felt that a 5' foot area would be adequate and approved a variation from the standard.

Mayor Kennedy referred to lighting carrying over into the adjacent neighborhood. He asked if there were any provisions to address this concern?

Planning Manager Rowe responded that the Planning Commission, as part of the PUD guidelines for the project, included a stipulation that requires the lighting on the building to be placed at a lower height and not to exceed 20' to minimize glare and lighting of the center.

Council Member Chang inquired which section would provide a 25' versus the required 30' setback.

Director of Community Development Bischoff stated that areas that there would be less than 30' would be the area through the gas station and a portion of the retail building. He indicated that the city requires landscaping to be provided up to the face of the curb. Normally, the curb is 10' to the street side of the property line. Mr. Schilling's point is that where the curb is 10' from the property line, the further you move toward the south, the further that curb line gets away from the property line. Mr. Schilling's position is that in a certain area, landscaping would be 50' or more in depth. In certain areas, you would have 30' or more. The one area that you would not have the 30' is in the area of the gas station and the fast food area. He noted that Mr. Garcia, project architect, made reference to the installation of 36" boxed trees, noting that the project originally proposed 24" boxed trees at an approximate height of 9'-10' tall with a spread of approximately of 4'.

Council Member Tate noted that the trees that were in front of Central High School are gone and may be attributed to a disease. He stated that it was his hope that the trees were not the same type of tree. He requested that staff investigate this concern.

Council Member Sellers noted that four phases are proposed. He requested that staff address the requirement for these phases in terms of timing and commitments.

Director of Community Development Bischoff stated that the first phase would include a driveway with a modified signalized intersection and installation of storm water retention. Phase II would need to include the loop driveway and retail or office center. He indicated that either the retail or office buildings would need to be constructed and occupied before building permits could be issued for the fast food restaurant. He said that street improvements to Monterey Road would occur as phases occur.

Council Member Sellers said that if it is determined that it does not make sense to complete the final phase for a period of time, the infrastructure improvements would already be installed. However, the project proponent would not need to build the final phase.

Director of Community Development Bischoff said that the gasoline station would be built but that it is unknown what the economy would allow or what other factors would come into play.

Council Member Tate asked what assurance the City would have that the wrought iron fence is safe and that it cannot be scaled? He did not believe that wrought iron is conducive to blocking noise. He felt that the noise concern could be mitigated, depending on the fence material used.

Director of Community Development Bischoff stated that the only fence material that would provide effective noise attenuation is a masonry wall. He said that studies suggest that the use of landscaping would not provide noise attention unless it was 40' in depth.

Council Member Chang expressed concern with traffic circulation and safety. She inquired if there was room for four lines under the overpass?

Director of Public Work Ashcraft stated that there is not enough room for four lanes under the overpass at this time. He said that ultimately, the underpass would be replaced when Caltrain doubles the track at this location. Caltrain would be required to fund the new bridge and that the road would be widened to four lanes at that time. He did not know when Caltrain expansion would occur and that staff did not see this driven by traffic volumes in Morgan Hill over the next 10 years. He addressed traffic circulation for the area and the project.

Mayor Kennedy inquired about storm water retention, its proposed location, and what percent flood/storm it is designed to retain?

Director of Public Works Ashcraft stated that the standard requirement that development retain the difference from after development versus pre development for a 25-year storm.

Mr. Schilling informed the City Council that the fence would wrap around the southern edge of his property and tie off the abutment of the existing fence and prevent encroachment. He informed the City Council that he met with Caltrain and indicated that they prefer the installation of an 8' wrought iron fence. It has been indicated that a wrought iron fence is easy to maintain and that individuals cannot cut through or climb over easily. He proposes to take the fence beyond his parcel and provide an additional 795 linear feet of fencing to the north of the property line to tie into the fenced area and encourage individuals to use the signalized intersection and the pedestrian crosswalk. He said that the carwash can be moved to the Monterey Road side and that he would work with staff to mitigate any visual impact that may be created with the carwash facility.

Mayor Pro Tempore Carr thanked those in attendance for their concerns and comments. He stated that he is struggling with a couple of issues. The argument of the proposed school's proximity is a not a concern as the zoning is not violated by the proposal. He stated that he did not have confidence that the proposed high school would be built. He stated that he was struggling with the argument of the safety of individuals crossing the railroad tracks. He was not sure what can be done to address this concern, noting that the lot is vacant and people are crossing the railroad trucks and creating a dangerous situation. He did not know what kind of development could occur that would stop people from crossing the railroad tracks. He could not imagine that the construction of a park would lessen the draw of children crossing the railroad tracks. He felt that children would want to cross the railroad tracks to get to playground equipment more than they would to get to a carwash or gas station. He was not sure what can be done with the property, stating that something has to happen with the property. As part of the general plan update, the property was mentioned as a very important piece of property to the City and a very important gateway to the community, noting that it is not an attractive site. He felt that development needs to occur and that he was not sure that the city would have another developer who would put as much time and effort into safety guidelines as is being seen this evening.

Mayor Kennedy stated that the current pathway across the railroad tracks has been a serious concern of his for several years. When the shopping center built at Cochrane in the vicinity, there was a natural need to get across the railroad tracks and Monterey Road. He felt that there are a lot of features of the project that would help to relieve the existing situation. The project would provide a safe intersection at the corner of Old Monterey and Monterey Road, providing a better pedestrian access than exists today. He requested that staff look into the possibility of obtaining federal funding assistance to build an elevated pedestrian crossing. He noted that it has been indicated that this site has been general planned for commercial for over 30 years. Therefore, commercial projects have the entitlement to locate on this site. He felt the developer has done a good job in trying to address the issues raised and that he has gone the extra mile to try to make this a workable project. In response to the question of the need for another gas station, he stated that the city allows for the possibility of competition. He stated the City has to follow the zoning and general plan that has been put together, noting that the City recently went through a general plan update process which involved many members of the community and that the site retained its general plan of commercial. He felt

this may be the best project the City would get for the site.

Council Member Tate noted that Mr. Schilling consulted with Caltrain, who believes the wrought iron fence is the safest fencing material to use. However, he wanted to make sure the city/developer do whatever they can to discourage anyone from climbing the fence. He stated that he has heard that having a facility opened 24-hours makes it less safe. It was his intuition that it is safer when you have a 24-hour establishment. If you build a park, he felt there would be dark places and people would gather versus a facility that is lighted, noting that the light would be directed toward the center. He said he has always been disturbed by the concern of alcohol, noting there is a bar in the El Capri Restaurant that serves alcohol to customers. He said that the individuals leaving the project would be individuals purchasing alcohol to consume elsewhere. He felt there may be a safety issue in place already. He requested that the uses be sited to minimize noise impact to the neighborhood.

Council Member Sellers did not believe the developer could have done a better job to make the project a more attractive gateway project/center. He knows that the trees to be planted would be too small initially, but they would grow and become attractive assets. He said he did not have a problem with the height of the office building. He felt the retail and restaurant are appropriate uses for the site. Regarding the gas station, he said Arco is a different product that would do more for Morgan Hill as it will attract more sales and give citizens the opportunity to buy cheaper gas. However, he has two issues of concerns: 1) the general frontage of the project. He said that although you can find few developers who would be more reliable than Mr. Schilling, economics can impact projects. He noted the only thing that can be guaranteed is the installation of the front end of the project. He did not have a problem with the gas station component but he has a problem with the AM/PM market due to the excessive volume of traffic that this particular use would generate. He felt the AM/PM market would further encourage foot traffic. He gave consideration to moving the fence to the west side of the railroad track but understood this would not be practical or possible. 2) The 24-hour facility: sale of alcohol (consider restricting between 2-8 a.m.). Being open for that many hours creates concerns with light and noise. He was pleased with the high quality of architecture proposed. While the applicant did a tremendous job with the architecture, unless the City can figure out a way to do without the convenience store, alcohol sales, and 24-hour use, he could not support the PUD.

Council Member Chang stated she could not find a better developer for the project as she respects the quality of work performed by the Schilling family. She expressed concern with the traffic and gateway issues. She did not believe a gasoline station should be a part of a gateway, no matter how attractive it is. She agreed with Mr. Broderson that the building should be sited in the front and the gasoline station in the back. She indicated that she could not support the project.

Council Member Sellers expressed concern with light, safety and traffic, noting that cars seem louder at 3:00 a.m. Also, of concern is the sale of alcohol.

Mayor Pro Tempore Carr noted that there are issues that need to be resolved. He asked if there is a

deadline to making a decision on this application this evening?

Director of Community Development Bischoff responded there are no deadlines that he is aware of which would necessitate action on this application this evening. Should the City Council decide to approve the PUD this evening, staff would take the use permit back to the planning commission in March.

In response to Council Member Tate's question, Mr. Wikerham stated the 24-hour aspect is a deal breaker because of security issues. He said Arco has statistically proven that if you close a facility, you are jeopardizing the facility to loitering, potential break-ins, and an unsafe environment. If Arco is going to be investing in the community, it needs the tools they are proposing to build a "Cadillac" facility in order to make a rate of return and justify the project. He felt that the design before the City Council hides the facility more than any other design would. He noted that the project proposes to install berms to mitigate lighting concerns since berms protect and keep lighting on site. He indicated that the sale of beer and wine is important to the project but that he would be willing to work with the City regarding the hours of sale. He stated that he wants to work with the City and yet keep the project justifiable. He informed the City Council that he researched city codes before getting involved in the project and felt the project has met these codes. He stated no one has approached him about regulating the hours of sale of tobacco, but that he would agree to provide Council with safety and crime statistics/studies.

Council Member Chang stated that she wants to see an Arco facility in Morgan Hill. However, it is the location which bothers her.

Mayor Pro Tempore Carr said he would be interested in any studies/statistics regarding the 24-hour nature of the business relating to having someone on site 24-hours and having the facility lit 24-hours. He would also be interested in receiving economic information relating to the 24-hour component.

Mr. Schilling identified the phasing schedule as follows: Phase I would be the service station and all of the safety improvements required for the entire project, including the installation of landscaping, trees, wrought iron fence, signal light at Monterey/Old Monterey Road with pedestrian crosswalks, continuing sidewalk to Cochrane Road, modification of the signal light with pedestrian crosswalk and the installation of meandering sidewalks. Phase II would complete all off site improvements, loop drive aisle, and begin the retail or office space prior to the construction of the fast food restaurant. He informed the City Council that he does not have a user for a portion of the site. Should a food service use be proposed, it would be one that does not currently exist in Morgan Hill.

Steve Schilling addressed the anticipated food users, concurring that a food use would be one that does not currently exist in Morgan Hill. He indicated that the use could be a coffee shop, hot dog

stand, bakery service or other uses that are not traditional fast food restaurants. Regarding the retail center, he stated that he has spoken to chiropractors and restaurant owners in Morgan Hill looking toward updating their current facilities. He stated that he has spoken to a number of users with no commitment at this time because it is not known if he has an approved project. He noted that the fast food center would require a separate use permit.

Council Member Tate identified two areas of concern: 1) safety of the fence, and 2) the 24-hour mitigations. He needs assurance that the fence would do what it is intended to do and that there are mitigations to address noise and lighting from the 24-hour use. He indicated that he could not make a decision this evening as he needed additional information.

Mayor Pro Tempore Carr felt that there were questions that need to be answered and there was other information which would be helpful. He was pleased to hear that Arco was willing to consider reducing the hours for the sale of alcohol. He would also like to review safety and crime statistics that may help the Council decide between the 24-hour component or less than 24-hour component. He indicated that although he hates to delay projects, he felt there may be information that would be forthcoming and helpful.

Council Member Chang inquired if it would be possible to move the building to the corner and the gas station to the rear to meet the gateway standards?

Mr. Wikerham stated that he would need to think about the relocation of the gasoline station to the back. If the buildings were to be shifted, it would result in a less than attractive facility and he did not believe that it would enhance the gateway. He said that a design was used to disguise the canopy so that it would be a winning scenario. He felt that the purpose of the code was to hide the canopy and felt that he designed an attractive building for the layout of the street versus the back of a building that looks like a wall. He informed the City Council that he has a letter of public convenience from the Chief of Police in support of the sale of beer and wine.

Mayor Kennedy felt that it may be helpful to furnish better renderings and perspectives of what is being proposed.

Council Member Sellers requested that staff and the applicant make sure that the questions raised this evening are answered.

**Action:** Mayor Kennedy **reopened** the public hearing.

**Action:** On a motion by Council Member Tate and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **continued** the public hearing to February 27 for the expressed purpose of addressing the items raised this evening.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **agreed** to extend the meeting time to midnight.*

**13.    ZONING AMENDMENT APPLICATION, ZA-01-12: CENTRAL AVENUE-CENTRAL PARK (APNs 726-27-104 and 105)**

Director of Community Development Bischoff presented the staff report. Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of the Residential Planned Development (RPD) Ordinance No. 1547, New Series.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1547, New Series by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO A PRECISE DEVELOPMENT PLAN FOR AN 18-UNIT SINGLE-FAMILY PROJECT ON AN 11.51 ACRE SITE LOCATED ON THE NORTH SIDE OF EAST CENTRAL AVENUE, EAST OF CALLE MAZATAN AVENUE (APNs 726-27-004 AND 005) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**14.    ZONING AMENDMENT APPLICATION, ZA-01-20: TENNANT - SAFEWAY**

Planning Manager Rowe presented the staff report. He indicated that the applicant felt very strongly about the placement of the fuel center at the corner of Tennant and Monterey Road as it is needed for market visibility and is a key component to the agreement that has been negotiated between the shopping center owner and Safeway. He indicated that the Planning Commission is requesting the opportunity to conduct further review of the PUD to address issues such as signage, compatibility with the new construction, and integrating the new design with the existing building designs. He informed the City Council that a traffic study was conducted for the overall center design and that it identified the need for the installation of a traffic signal at the corner and that it would be included as a condition of the conditional use permit for the fuel center as well as a condition of a subdivision. He stated that owner of the shopping center has indicated to staff that he would not be willing to pay for the traffic signal. Therefore, this is an issue that would need resolution before taking further action with respect to the subdivision or use permit.

Mayor Kennedy opened the public hearing.

Mike Labarbara, representing the ownership of the shopping center, stated that the development proposal would revitalize the Tennant Station Shopping Center, as it has been an eye sore for the past eight years. After two years of hard work, he has an agreement to improve the shopping center by bringing back Safeway. He said that the agreement with Safeway contains limitations on the tenants that would be allowed in the shopping center and that certain things in the layout limit what can be done in the future. He stated that Safeway is scaling down their typical store layout in order to fit into the area, taking a gamble in opening a new store in Morgan Hill in a down economic time. He felt that this is the best deal to revitalize the shopping center and that it may be the only deal that would come forward to revitalize the shopping center in the near future. He stated that the number one sticking point for moving forward with the site has been the gas station as it is a vital issue and critical component to getting to a break-even point on this deal. If he has to go back and discuss moving the gas station, all negotiations up to this point would be thrown away and that negotiations would start from scratch, killing the deal. He requested that the City Council approve the project with the gas station at the corner. Should the City Council have a problem with the gas station on the corner, he requested that the Council weigh all the positives that would come by revitalizing this gateway location versus the gas station on the corner. He felt that this is the best deal for the owner, Safeway and the City as far as revitalization of the site is concerned.

Galen Grant, project architect, felt that the project would add vitality to the shopping center. He addressed the architectural features of the proposed Safeway store, indicating that the proposed 7,000 square foot office building and the fuel center would be compatible. He stated that feature elements would be used elsewhere as the center is updated over time. It is felt that this would be an appropriate distribution of office pads along Tennant Avenue. He stated that there is no intention of removing the mature landscaping trees as the parking bay would be pulled back. He stated that the applicant has agreed to other concessions since the Planning Commission meeting. He requested that the City Council approve the project as submitted. He said he would respond to issues that the Planning Commission may have relating to the architecture.

Council Member Tate noted that the installation of a Tennant Station sign would eliminate the existing landscaping on the corner. He stated he did not object to a Tennant Station signature sign



but not if it would eliminate the landscaping at the corner. He requested a detailed drawing to understand what is taking place at the corner.

Mr. Grant stated that he is proposing a feature element with a large screen wall with the use of trellis with fuel price signs facing each of the roads. The landscaping would be retained with a Tennant Station sign below. He assured the City Council that the mature landscaping would be retained.

Todd Paradise, fuel service manager for Safeway, indicated that the fuel station is important to Safeway as are the other departments. He requested that the Council think through all the gasoline station locations in Morgan Hill, noting that most are located on the corner for visibility. He said that he would agree to install another driveway closer to the fuel center if the Council would so request. He felt that once the elevations are completed, the fuel center would look like a building from the intersection. He felt that it made sense to have the fuel center at the corner. He indicated that six gasoline dispensers are proposed with 12 fueling positions. There would be no sale of alcohol but that there would be the sale of tobacco. He would agree to some tweaking to the layout as long as the fuel center is allowed to be sited on the corner. He said that the way that the fuel station is laid out from the corner, you would not see the dispensers as a wall is proposed to be constructed and that you would not see cars fueling. He informed the City Council that Safeway has incorporated fuel centers in new facilities and in old facilities where room exists for the past two to three years at 125 locations.

Mayor Pro Tempore Carr expressed concern that Safeway may decide that this is not a business model that they want to be in and that the fuel station becomes abandoned and becomes an empty gasoline station. Also, Safeway may decide to sell or spin this division off and have it operated separately and that a new operator may return to state that 12 dispensers are not enough to make the station work and request an AM/PM convenience store, opening 24-hours.

Mr. Paradise stated that any proposed changes would require City approval. He could not commit to tearing out/selling the fuel station should this model not be successful. However, if the fueling center sits closed for a period of time, such as 24 months, Safeway would agree to remove it versus having the facility sit empty.

Council Member Chang inquired what would happen should the City Council not approve a fuel center at the corner and relocate it per staff's recommendation?

Mr. Labarbara stated that it would be difficult to move forward without the gasoline station at the corner because it would result in a \$1 million loss. He would have to return to negotiations and that he could not guarantee what would come of negotiation discussions. Safeway may move forward without the gasoline station but noted that there were economic issues on both sides of the table as the gasoline station is important to him and to Safeway.

Mary Davi, area real estate manager for Safeway, stated that when there are site plans or economic changes occur, she has to take it back to the real estate committee. If the fuel center is taken out of the component, she indicated that the real estate committee would not look favorable upon it. She concurred that negotiations would continue, but that the chances of getting a deal approved in this economic climate would not be a given and may result in a lost deal. She stated that relocating the gas station would not function, noting that the fuel center market studies are driven by the gas station by the corner.

Ralph Lyle, 2181 Whipperwill, stated that he was not representing the Planning Commission. He referred to the Planning Commission minutes that address the information presented to the Planning Commission. He informed the City Council that final plans were not included in the Planning Commission's packet and that the Commission reviewed them at the night of the meeting. The Planning Commission was not furnished with a traffic report, noting that circulation is affected by the locations of the units on the site. He noted that the Planning Commission voted 5-1 for the alternate gasoline station location. The conclusion derived by the Planning Commission was that all other issues of concern relating to landscaping, circulation, signage, and parking would be reviewed in detail as part of the traffic report. He stated that although the Planning Commission recommends City Council approval, it is requesting that the City Council send the project back as there are unresolved issues that are dependent upon, to some degree, the location of the gasoline station. He stated that new information continues to surface and that he found some of them difficult to understand.

No further comments being offered, the public hearing was closed.

Council Member Tate concurred with staff's recommendation that should the Council approve the fuel station at the corner that the existing landscaping is retained, looking at canopy and the entire design. He said that he would consider having the fuel center on the corner.

Mayor Pro Tempore Carr noted that the project proponents are willing to work with the Council regarding the design components. He concurred with the retention of the mature landscaping. He felt that the corner needs signage and needs improvement. He felt that this is an important intersection and felt that landscaping is important. He felt that if time is spent discussing the project, the corner can be improved. He expressed concern with the layout adjacent to the fitness center and the parking situation. He requested that additional parking be accommodated at this end of the shopping center.

Mayor Kennedy supported the suggestion of accommodating additional parking at the eastern end of the shopping center. He recommended that the application be referred back to the Planning Commission, indicating that the Council majority supports the gas station at the corner, and that the project to be cleaned up according to the Commission's recommendation.

City Attorney Leichter inquired whether the City Council was approving the gas station subject to design review by the Planning Commission or does the Council want to see the work that the Planning Commission does on the design review before the Council approves the gas station on the corner?

Mayor Kennedy stated that he did not need to see the design of the project before approving the location of the gasoline station.

Council Member Sellers felt comfortable with the location of the fuel station. He stated that he did not have a problem with the canopy but that it needed to be well designed to a high standard. He said that seeing a blank building at the corner would be less attractive than seeing a canopy set back further. He did not want the design to return to the City Council. He felt that it was imperative to point out that he is not interested in going into the design details and the converse needs to be made clear to the Planning Commission as the Council has indicated that the fuel station can be sited on the corner.

**Action:**        *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Sellers, the City Council unanimously (5-0) **referred** the application to the Planning Commission per Council's discussion.*

**Action:**        *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Commission unanimously (5-0) **agreed to extend** the meeting beyond the 11:00 p.m. curfew.*

#### **15.    UPDATED 2000 URBAN WATER MANAGEMENT PLAN – Resolution No. 5550**

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5550, Approving the Updated 2000 Urban Water Management Plan.*

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Directed** the City Clerk to File the Updated 2000 Urban Water Management Plan with the California Department of Water Resources within 30 Days.*

#### **OTHER BUSINESS (CONTINUED)**

#### **17.    UPDATE AND EXTENSION OF MEASURE P**

Mayor Kennedy opened the floor to public comment.

Rocke Garcia requested that he be considered to serve on the committee. He felt that it was important to retain the integrity of Measure P as one point would make a difference whether a project continues at Madrone Crossing.

Ralph Lyle stated that he would prefer to see one ballot item. He did not believe that the City should be in a position to have an election now and another election in a year. It was his belief that with some ingenuity, that an election can be conducted in 2003 or March 2002 to address ABAG issues. He volunteered to serve on any committee created by the City Council.

No further comments were offered.

Council Member Tate and Mayor Kennedy stated their concurrence with the comments expressed by Mr. Lyle to schedule an election in fall 2003 or March 2004.

Council Member Tate stated that a ballot measure needs to be done, using ingenuity to address the state requirements.

Council Member Sellers felt that it may be appropriate to contact ABAG and give them a heads up about the election date.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **continued** this item to February 20, 2002.*

#### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

#### **CLOSED SESSION (continued)**

City Attorney/Agency Council Leichter announced that the City Council would be considering the closed session items identified above.

#### **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the closed session items to public comment. No comments were offered.

#### **ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to closed session at 12:05 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 12:34 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney Leichter announced that no reportable action was taken on the closed session items.

**ADJOURNMENT**

There being no further business, Mayor Kennedy adjourned the meeting at 12:35 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**Irma Torrez, City Clerk/Agency Secretary**